

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.2.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C. (A) No.243 of 2000

The Commissioner of Income Tax
Tamil Nadu V,
Chennai ... Appellant

Vs.

M/s.Nazir Basheer & Co.,
Tanerry,
P.B.No.17,
Ambur-635 802 ... Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Madras 'C' Bench dated 29.4.1999 in ITA No.2971/Mds/1992 for the assessment years 1989-90 against [the order of the commissioner of Income Tax (Appeals), Madras-34 dated 7.10.92 and made in ITA.No.550/Mds/1991-92] against [the order of the Income Tax Officer, Ward I (4) Vellore, N.A.A.District dated 21.1.1992 made in PAN.47015-Fx 7039/GI.No.3311 N/I(4) VLR for the Assessment Year 1989-90].

For Appellant : Mrs.Pushya Sitaraman,
Senior Standing counsel

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal dated 29.4.1999 made in ITA No.1 2971/Mds/1992, raising the following substantial question of law.

(a) Whether in the facts and circumstances of the case, the Appellate Tribunal was right in law in deleting the addition of Rs.1,57,133/- being the amounts collected towards sales tax liability and described as 'contingency deposit' from the business income of the assessee?."

2.1. The brief facts leading to the filing of the above appeal are as under.

The assessee is running a tannery and is mainly doing job work, like getting raw skins from its customers and processing them in its tannery on behalf of the customers. During the assessment year, the assessee had collected a sum of Rs.1,57,133/- as contingency deposits from parties towards possible sales tax liability. The assessing officer added the contingency deposit collected by treating the same as income and not allowing as expenses under Section 43B.

2.2. The appellate Commissioner of Income Tax- on appeal by the assessee, upheld the order of the assessing officer following the Supreme Court decision in the case of Choweringhee Sales Bureau P.Ltd.(87 ITR 542) on the ground that the assessee collected sales tax on job work, that it did not keep the money as a separate deposit but used it as its own assets for the purposes of its own business. The crediting of sales tax collected under a separate head called 'contingency deposit' will not alter the character or nature of collection.

2.3. On further appeal by the assessee, the Appellate Tribunal, deleted the additions made in respect of collections of contingency deposits and allowed the appeal. Hence, the Revenue preferred the above appeal.

3. Heard the learned Senior Standing counsel appearing for the appellant, who states that the issue involved in this appeal is answered in favour of the Revenue by this Court in COMMISSIONER OF INCOME TAX vs. SOUTHERN EXPLOSIVES CO., (242 ITR 107).

4. It is settled law that if a receipt is a trading receipt the fact that it is not so shown in the account books of the assessee would not prevent the assessing authority from treating it as a trading receipt. It is the true nature and quality of the receipt and not the head under which it is entered in the account books which is decisive. Eventually if the amount so collected is passed on to the State Government or refunded to the purchasers, the assessee would be entitled to claim deduction of the sum when so paid or refunded-vide K.C.P.LIMITED VS. COMMISSIONER OF INCOME TAX (245 ITR 421).

5. In the decision relied on by the learned Senior counsel, viz., COMMISSIONER OF INCOME TAX vs. SOUTHERN EXPLOSIVES CO., (242 ITR 107), the true character of a receipt was vividly discussed, as to when it would amount to trading receipt or otherwise. It was held therein that the true character of a receipt must be judged with reference to the reasons for the collection, and the liability for meeting which the collection was made. When the liability is a statutory one, the true

character of the collection was a trading receipt. By calling a portion of the amount deposit, it cannot be said that the assessee had constituted itself as a trustee, and therefore, the amounts received were not required to be regarded as part of it's trading receipt.

6. In the instant case, the amounts collected by the assessee were amounts which were meant to be utilised by the assessee for meeting its tax liability. Even if the assessee paid over the entire amount received by it as deposit towards sales tax to the State Government, it would still have been open to the assessee to seek refund if the assessee wished to claim such refund on the ground that the tax had been levied at a higher rate than the rate permissible. The fact that the assessee had chosen to adopt the device of labelling a part of the amounts collected towards its sales tax liability as 'contingency deposit', could not make a difference. The amount formed part of the assessee's income.

7. In view of the forgoing conclusion, we hold that the Tribunal was not justified in deleting the addition made in respect of collections of contingency deposit. Therefore, the order of the Tribunal is set aside and the question of law is answered in favour of the Revenue and the appeal is allowed.

msk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar, The Income Tax Appellate Tribunal, Madras 'c' Bench, Rajaji Bhavan, Besant Nagar, Chennai.

2.The Commissioner of Income Tax, Tamilnadu V,Chennai.

3.The Commissioner of Income Tax (Appeals), Madras-34.

4.The Income Tax Officer, Ward No.I (4), Vellore, N.A.A.District

+ one cc to Mr.Pushya Sitaraman, Sr.Standing Counsel Sr.No.8354.

VC (CO)

RSM/21.3.2006

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